

HOUSE BILL No. 1655

DIGEST OF INTRODUCED BILL

Citations Affected: IC 28-5-1-9.

Synopsis: Financial institutions. Makes technical corrections affecting industrial loan and investment companies.

Effective: July 1, 2003.

Bardon

January 21, 2003, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1655

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 28-5-1-9 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) An industrial loan and
3 investment company, hereinafter in this section sometimes called
4 "company" may, subject to the requirements of this section, make or
5 acquire a loan secured by a first lien upon real estate (including a
6 leasehold) located in any state or the District of Columbia in an amount
7 and for terms not to exceed:
8 (a) (1) in the case of improved real estate, including farmland:
9 (i) (A) three-fourths (3/4) of the appraised value if the terms of
10 the loan require substantially equal payments at successive
11 intervals of not more than one (1) year each and if the terms of
12 the loan are such as would require the payment of forty percent
13 (40%) of the principal of and all interest on the loan within a
14 period of ten (10) years; or
15 (ii) (B) nine-tenths (9/10) of the appraised value if the terms
16 of the loan require substantially equal payments at successive
17 intervals of not more than one (1) year each and if the terms of

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1 the loan are such as would require the payment of all principal
 2 and interest on the loan within a period of thirty (30) years,
 3 except that the date of the initial payment of principal on a
 4 loan to a business borrower may be deferred for a period of not
 5 to exceed three (3) years from the date of the loan; or
 6 ~~(b)~~ **(2)** in the case of unimproved real estate, one-half (1/2) the
 7 appraised value for a term not to exceed five (5) years or
 8 two-thirds (2/3) of the appraised value for a term not to exceed
 9 five (5) years if utilities, roads, or streets necessary for the
 10 development of such real estate have been completed. If the
 11 money borrowed on real estate is to be used for erecting
 12 improvements, and if the money is to be advanced as the work
 13 progresses, in such event, the appraised value for purposes of the
 14 loan shall be based upon the condition of the real estate when
 15 such improvements shall have been completed.
 16 **(b)** The department may by rule or regulation increase or decrease
 17 the fraction of the appraised value which may be loaned with real estate
 18 as security and may increase or decrease the terms for which such loans
 19 may be made if the department finds that it is in the interest of the
 20 economy of the state and in conformity with sound financial practice.
 21 **(c)** In a case in which a loan subject to this section is made to
 22 finance construction of an improvement and such loan is combined
 23 with a permanent loan to continue after completion of construction, the
 24 term of the construction loan or that portion of the term not in excess
 25 of three (3) years, shall not be counted against the maximum term for
 26 the permanent loan permitted under this section but such combined
 27 construction loan and permanent loan shall be subject to all other
 28 requirements of this section.
 29 **(d)** For the purpose of this section, a "leasehold" ~~shall mean means~~
 30 the interest, which is security for a loan, of a lessee of real estate under
 31 a lease which on the date of the loan has an unexpired term extending
 32 at least five (5) years beyond the maturity of the loan, or contains a
 33 right of renewal, which may be exercised by the mortgagee, extending
 34 at least five (5) years beyond the maturity of the loan. The requirements
 35 for a loan subject to this section shall be: (i) the loan shall be evidenced
 36 by a bond, note, or other obligation and the lien securing such loan
 37 shall be obtained by a mortgage, deed of trust, or judgment; (ii) the lien
 38 shall be a first lien (except for a lien of taxes, assessments, or charges
 39 which are not yet due or which are payable without penalty) unless all
 40 prior liens are held by the company and the aggregate of all loans by
 41 the company secured by liens on the real estate satisfy all other
 42 requirements of this section pertaining to such loans; (iii) insurance

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1 against loss from fire on all buildings on the real estate which are
 2 included in the appraised value, issued by insurers acceptable to the
 3 company and authorized to do business where the real estate is located
 4 and in form and amount satisfactory to the company, shall be
 5 maintained during the term of the loan by or at the expense of the
 6 borrower, except that the company may at its own expense maintain
 7 such insurance covering only its interest as lender; and (iv) the
 8 borrower shall pay all expenses in connection with the loan for title
 9 insurance, searches and certificates, appraisal fees and fees for
 10 preparation and recording of documents.

11 **(e)** The appraised value of the real estate offered for security shall
 12 be determined by one (1) or more competent persons who shall report
 13 such valuation in writing to such company. The written report so made
 14 shall be signed and in the event that such company makes such a loan,
 15 shall be kept on file by it subject to inspection by the department.

16 **(f)** The foregoing limitations and restrictions shall not apply to real
 17 estate loans which are (1) mentioned in sections 6(a)(10), (11), and
 18 (12) of this chapter and the regulations issued thereunder insofar as
 19 said sections and regulations apply to loans on the security of real
 20 estate; and (2) made under 38 U.S.C. 1801 through 1825 and the
 21 regulations issued under that federal law, insofar as said federal law
 22 and regulations apply to loans on the security of real estate, and under
 23 such limitations and restrictions as the department may, by regulation,
 24 prescribe.

25 **(g)** The limitations set forth in this section shall not apply to
 26 mortgages taken as additional security for loans otherwise authorized
 27 by this chapter or as security for any loans which are in default or to
 28 second mortgages. Loans made to businesses where the company looks
 29 for repayment out of the operations of the borrower's business, relying
 30 primarily on the borrower's general credit standing and forecast of
 31 operations, with or without other security, but wishes to take a
 32 mortgage on the borrower's real estate as a precaution against
 33 contingencies, shall not be considered as real estate loans within the
 34 meaning of this section and, therefore, shall not be subject to the
 35 limitations of this section.

36 **(h)** Any loan made upon the security of real estate which exceeds
 37 the maximum fraction of the appraised value of such real estate will not
 38 be in violation of this section so long as that portion of the loan in
 39 excess of the maximum fraction of the appraised value of the real estate
 40 is fully guaranteed or is fully secured by collateral consisting of a
 41 savings deposit, certificate of deposit, certificates of indebtedness or
 42 investment, assignment of rent, life insurance, or other collateral

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1 security to which the company has ready access and a first claim.

2 (i) Subject to the limitations and restrictions of this section, any
3 industrial loan and investment company, in addition to being permitted
4 to make loans as provided by this section, may purchase, acquire, hold,
5 and dispose of any loan, made to any other person, firm, limited
6 liability company, or corporation and the notes and mortgages securing
7 such loan. Before any such loan shall be purchased by any industrial
8 loan and investment company the real estate securing such loan shall
9 be appraised in the manner provided by this section for appraisement
10 of the real estate offered as security for a loan to be made by such
11 industrial loan and investment company.

12 (j) Subject to the limitations of this section relating to the fraction
13 of the appraised value which may be loaned on real estate as security,
14 a company may make variable rate mortgage loans and rollover
15 mortgage loans subject to the same limitations and rights provided state
16 chartered banks and federally chartered banks. ~~under IC 28-1-13.5.~~

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